STRAITS SETTLEMENTS LAW REPORTS.

PUBLISHED BY AUTHORITY.

[ORIGINAL CIVIL JURISDICTION]
SPROULE, J.
December 11, 1931.

RE CHOP SIN GUAN SENG

[SINGAPORE BANKRUPTCY No. 529 of 1931]

Bankruptcy—Administrator of deceased carrying on business in firm name (Chinese Chop)—Receiving Order against the Chop—Bankruptcy Ordinance Section 3 (3).

An Administratrix carried on a business, of which the deceased had been sole proprietor, using the Chop or name formerly used by the deceased. Judgment was obtained, and a Receiving Order made, against the Chop.

Held, that the bankruptcy proceedings were misconceived and that the Receiving Order must be rescinded.

Motion.

Ang Tong Seng was a contractor who carried on business under the style of Chop Sin Guan Seng. He died intestate and his widow obtained a Grant of Letters of Administration to his estate but she never actually extracted the Grant because, as she said, she could not find a surety for the Administration bond. With the knowledge and acquiescence of the creditors of the deceased she carried on the business under the Chop name for more than two years. Some time after the death of the deceased a creditor brought an action against the Chop and obtained Judgment by default in that action. He then took bankruptcy proceedings and a Receiving Order in bankruptcy was made against the Chop.

The Official Assignee moved to rescind the Receiving Order.

Assistant Official Assignee for Official Assignee.

The whole law of bankruptcy is personal.

There must be a debtor and the act of bankruptcy relied on must be his personal act.

In this case there was no debtor. The chop was part of the estate of the deceased and the widow was an administratrix *de son tort*. *Re Fisher & Sons*, (1912) 2 K.B. 491, 19 Mans. 332.

No adjudication can ever follow on this Receiving Order; so the property can never vest in the Official Assignee or become distributable. The Court does not make abortive Orders.

The Court has always a discretion as to making a Receiving Order. If all the facts had been before the Court this petition would have been dismissed.

C. H. Smith for the petitioning creditor.

The question in *Re Fisher & Sons* (*supra*) was one of partnership. The other cases cited turn on adjudication and are not in point.

The widow was in fact trading under the Chop name and the proceedings are against the Chop and therefore against her.

SPROULE, J.—There is no magical efficacy in a mere name or Chop.

The widow was in an absurd position. If she made any profit it belonged to the estate and if she made a loss she was personally liable for it.

If she has in fact made a loss by carrying on this business since the death of her husband an action can be brought against her personally and no doubt she could be made bankrupt, but not in these proceedings.

The Receiving Order must be rescinded and the Petitioning Creditor must pay the costs.

The Official Assignee in person.

Solicitors for the Respondent—*Donaldson & Burkinshaw.*

[APPELLATE CIVIL JURISDICTION]
MILLS, J.
August 21, 1933.

In the Matter of the Will dated the 5th January, 1928 of SYED ALI BIN SALLAY AL HAMID, deceased.

SYED SALIH BIN ALI BIN SALLAY AL HAMID, Executor of the Will of SYED ALI BIN SALLAY AL HAMID deceased.

vs.

SYED AIDROOS BIN ALI BIN SALLAY AL HAMID & ors.

[SINGAPORE ORIGINATING SUMMONS No. 181 of 1932]

Costs — Right of Attorney-General to receive.

When the Attorney-General is joined as a party to proceedings in which a question arises relating to a public charity, he has the right to receive profit costs if costs are ordered to be paid to him.

Appeal from decision of the Registrar on taxation of a bill of costs.

The above suit related to the construction of a will. Questions arose relating to public charities and the Attorney-General was joined as a party. By an Order of Court dated 15th February, 1933 the costs of all parties were ordered to be taxed as between Solicitor and Client and paid out of the estate. The Attorney-General submitted a bill of costs claiming full profit costs in the manner of an advocate and solicitor employed by an ordinary party. On taxation every item except one out of pocket item was disallowed by the Registrar. The Registrar held that appearance had been wrongly entered as the Solicitor-General had signed the appearance as Solicitor for the Attorney-General; and that the Attorney-General could only recover such costs as he had become personally liable to pay.

Pedlow, Acting Solicitor-General, for the Defendant-Appellant. There is no merit in the first objection. Appearance was entered in the manner laid down by Form 18 of Schedule A of the Civil Procedure Code.

As to the second objection this was definitely overruled by the unanimous decision of the F.M.S. Court of Appeal in *Tham Hing Kwai* vs. *State of*

Negri Sembilan and others — 1932 F.M.S. Law Reports page 263, 1 Malayan Law Journal page 41.

The costs in this matter are claimed under the Order of the Judge and under section 59 of Ordinance No. 22 (Crown Suits). This section places the Attorney-General of the Colony in the same position as the Attorney-General in England so far as circumstances permit. In England the Attorney-General gets full profit costs. He cited

Halsbury, Volume 4, section 720 onwards.
Tudor on Charities, page 377.
Daniell's Chancery Practice, page 45.
Robertson's Civil Proceedings By and Against the Crown, pages 615, 621 etc.
Odgers on Pleading and Practice, Chapter XXI.

The real litigant is the Crown and not the Attorney-General in his personal capacity. If the Attorney-General had engaged an advocate and solicitor and had not paid him, the lawyer's remedy would be a Petition of Right against the Crown for the amount of his taxed costs.

The indemnity attaching to the costs is an indemnity to the Crown. The Crown, like any other litigant, is entitled to be indemnified for the expense it has been put to through its salaried servants having to devote their services to this litigation.

Henderson vs. *Merthyr Tydfil Urban District Council*, (1900) 1 Q.B. page 434.
Attorney-General vs. *Shillibeer*, 154 E.R. page 1356.
The London Scottish Benefit Society vs. *Chorley. Crawford* and *Chester*, 13 O B.D. page 872.
Muhammad Alim Oollah Sahib vs. *The Secretary of State for India*, (1393) I.L.R. 17 Madras page 162.

A bill of costs is always the clients' bill though in practice it is spoken of as the bill of such and such a firm of lawyers.

He also referred to *Re Cardwell, Attorney-General* v. *Day*, (1912) 1 Ch. page 779 quoted at page 1419 of the *Annual Practice* 1933 as follows:—

> "In proceedings for ascertaining the construction of a testator's will in reference to charitable legacies the Attorney-General is entitled to his costs as between solicitor and client out of the fund."

This rule of law is quoted in *Van Someren's* Civil Procedure Code page 818.

Walters for the Plaintiff. The general principle that costs are an indemnity has two apparent exceptions:—(1) Where a solicitor appears in person he may still be allowed profit costs and (2) A salaried solicitor who receives his salary from the successful party may be allowed profit costs, subject to certain limitations which are irrelevant in this case. An example of this kind of case is *Henderson* v. *Merthyr Tydfil U.D.C.*, (1900) 1 Q.B. 434. The solicitor in person cases cannot apply because the Attorney-General has a solicitor on the record. The salaried solicitor cases cannot apply because the solicitor on the record, namely, the Solicitor-General is not salaried by the defendant, namely, the Attorney-General. If the Crown were the defendant then I admit that the salaried solicitor cases would apply. The Crown is not a party to these proceedings. There is a distinction drawn in Ordinance No. 22 (Crown Suits) between the Crown as a party to proceedings and the Attorney-General as a party to proceedings. See sections 41 and 59. The same distinction is recognised in *Daniell's Chancery Practice*, 8th Edition, Vol. 1 page 47. The Attorney-General is therefore only entitled to costs which he can show that he has paid or become liable to pay to the Solicitor-General. He is accordingly entitled to no profit costs whatever.

Pedlow (Solicitor-General) for the Attorney-General was heard in reply.

Summons in Chambers.

MILLS, J.—In this proceeding the Attorney-General was joined as a defendant on the ground that a question relating to a public charity arose or might arise.

The Court ordered that the Attorney-General's costs should be taxed as between solicitor and client and paid out of the estate of the testator.

On the 10th June, 1933, the Registrar, in taxing the bill of costs tendered on behalf of the Attorney-General disallowed every item except item 5, which represented an out-of-pocket expense.

The Attorney-General now applies to the Court to allow the items disallowed by the Registrar.

During the proceedings before the Registrar several highly-technical objections were raised against the Attorney-General: these were based on the mode in which appearance had been entered and on the mode in which the bill of costs had been signed. In my opinion there is no merit in those objections: I hold that in both cases it was correct for the Solicitor-General to sign as Solicitor for the Attorney-General: but even if in the latter case the mode of signature was incorrect, the error is not material; it is not essential in law that there should be a bill of costs and it is not essential in law that the bill of costs should be signed; a mere irregularity in the signature could not affect the right of a party to receive costs, and even if it did, it would not affect the rights of the Crown, since it is laid down in Section 5 (a) of the Civil Procedure Code that nothing in the Code shall affect the rights of the Crown (whom I hold to be the real litigant in this case) further or otherwise than is expressly enacted in that behalf.

I might add two things: first, the difference between a bill which is to be taxed as between party and party, and a bill which is to be taxed as between solicitor and client, is a difference of

degree and not of substance: secondly, the principle that costs are an indemnity applies in both cases. It is common ground that Section 41 of Ordinance No. 22 (Crown Suits) is not applicable to the present proceedings.

The Attorney-General bases his claim to costs on two grounds:—

(1) the real litigant is the Crown and on general principles the Crown, like any other litigant, is entitled to be indemnified for the costs incurred through its salaried servant, the Attorney-General or Solicitor-General or assistant to the Attorney-General having to devote his services to this litigation (cf. *Henderson* v. *Merthyr Tydfil Urban District Council*, (1900) 1 Q.B. p. 434);

(2) the right to costs is one of the rights which are conferred on the Attorney-General under Section 59 of Ordinance No. 22 (Crown Suits).

As to the first ground: the Respondent to the present application admitted that the Crown would be entitled to costs if it were the real litigant, but he denied that the Crown was the real litigant, and he sought to draw a distinction between proceedings in which the Crown is a party and proceedings in which not the Crown but the Attorney-General is a party.

As to the second ground: the Respondent contended that the right to receive costs was not one of the rights conferred on the Attorney-General under Section 59, because the circumstances of the Colony and the constitution of its Government and Courts do not admit of the Attorney-General having the right to costs as in England; in particular, he alleged that the Attorney-General of England is in a different position, because he receives fees in addition to his salary and because he must have been retained by a solicitor: he further contended that the onus is on the person seeking to show that the Attorney-General of the Straits Settlements has the same rights as the Attorney-General of England, and that in this instance the onus had not been discharged.

Regarding the first ground: in my opinion the alleged distinction between proceedings in which the litigant is the Crown and proceedings in which the litigant is the Attorney-General, is fallacious: I conclude without hesitation that in such proceedings as this the real litigant is the Crown and not the Attorney-General: that that in the case seems to me to be established beyond question by the situation which arises when the Attorney-General sets up a general claim of the Crown which is at variance with the interests of a public charity, or where the Attorney-General claims property for charitable purposes inconsistent with the rights of property of the Crown; in such cases the Solicitor-General is made a defendant as the officer on whom it devolves to represent the rights of the public charity or the rights of the Crown, as the case may be; in such cases the real litigant is the King, who as *parens patriae*, is supposed to superintend the administration of all public charities, and acts in this behalf by his Attorney-General or his Solicitor-General: as was said by the Vice-Chancellor in the case of the *Attorney-General* v. *Compton* (I Younge and Collyer, New Reports, 417 at p. 427) "it is the privilege of the public that the Crown should be entitled to intervene by its officer."

Regarding the second ground: I hold that the word "rights" in Section 59 of Ordinance No. 22 (Crown Suits) is wide enough to include the right to receive costs, and I hold that the circumstances of the Colony and the constitution of its Government and Courts do not preclude the Attorney-General from having this right: I hold further that the onus of showing that the Attorney-General of the Straits Settlements is precluded from having a right which the Attorney-General of England has, lies upon the person who alleges that the Attorney-General of the Straits Settlements is so precluded; since the last portion of Section 59 is in the nature of a proviso rather than of an exception; [*Rex* v. *James*, (1902) 1 K. B. p. 540 and the authorities discussed therein].

My conclusion is that the Attorney-General has the right to receive what are called "profit costs," in the present case.

I uphold the objections of the Attorney-General, and I order that the charges in the bill, with the exception of Item 5, be allowed.

[APPELLATE CRIMINAL JURISDICTION]

GERATHY, J.

September 27, 1933.

REX v. SINGAPORE BRITISH MALAY FOOTBALL CLUB.

[SINGAPORE MAGISTRATE'S APPEAL No. 56 of 1933]

Ordinance No. 45 (Common Gaming Houses) Section 4 (c)—Social Club.

If the primary object of a social club is or has become gaming and its premises are kept or used primarily for that purpose then such a social club is a common gaming house within the meaning and subject to the provisions of Ordinance No. 45 (Common Gaming Houses).

Magistrate's Appeal.

The Appellants being a social club were convicted by the Magistrate of an offence punishable under S. 4(c) of Ordinance No. 45 (Common Gaming Houses) and were fined $10. From this conviction they appealed.

Knowles for Appellant.

Bassett, D.P.P., for Crown.

GERAHTY, J.—This is an appeal by the Singapore British Malay Football Club, represented by its President and Secretary, against a conviction of an offence punishable under section 4(c) of Ordinance No. 45 (Common Gaming Houses) namely, that on or about the 21st May,